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STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,) CASE NO. OSH 2004-2
DEPARTMENT OF LABOR AND) (Inspection No. 306259359)
INDUSTRIAL RELATIONS,)
)
Complainant,)
) STIPULATION AND SETTLEMENT
vs.) AGREEMENT; EXHIBIT A; APPROVAL
) AND ORDER
COLOR DYNAMICS, INC.,)
)
Respondent.)
)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent COLOR DYNAMICS, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about September 12, 2003 through December 9, 2003, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 999 Wilder Avenue, Honolulu, Hawaii 96822.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on January 14, 2004 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$15,000.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 999 Wilder Avenue, Honolulu, Hawaii 96822.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The Citation is amended as follows:
 - a. Citation 1, Item 1, 29 CFR 1926.451(g)(3) [Refer to chapter 12-130.1, HAR], is affirmed but its characterization is amended from Repeat to Serious
 - b. Citation 2, Item 3, 29 CFR 1926.451(f)(3) [Refer to chapter 12-130.1, HAR], is deleted, as Respondent has provided HIOSH with written certification that William Lee has been retrained in suspended scaffold erection and use, in accordance with the requirements of the standard.
6. The Director reduces the aggregate penalty from \$15,000.00 to \$10,000.00

which shall be paid in full to the Director of Budget and Finance within five days of approval of this agreement by the Hawaii Labor Relations Board.

7. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

8. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

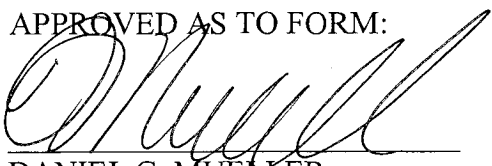
9. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

10. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.


11. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law.

DATED: Honolulu, Hawaii, June 10, 2004.

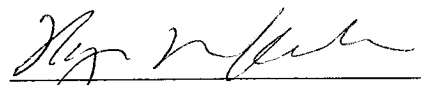
APPROVED AS TO FORM:


DANIEL G. MUELLER
Attorney for Respondent

COLOR DYNAMICS, INC.

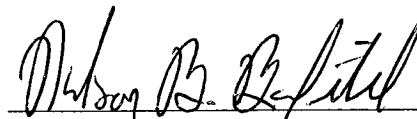
By: 
DAVID ONERHEIM
President

APPROVED AS TO FORM:



ROBYN M. KUWABE
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS



NELSON B. BEFITEL

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

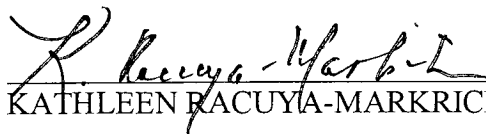
ORDER NO. 101



BRIAN K. NAKAMURA, Chair



CHESTER C. KUNITAKE, Member



KATHLEEN RACUYA-MARKRICH, Member

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7002 2030 0003 4048 9673

Citation and Notification of Penalty

To:
Color Dynamics Inc
and its successors
816 Gulick St
Honolulu, HI 96819

Inspection Number: 306259359 Melvin Han

Inspection Date(s): 09/12/2003
Issuance Date: 01/14/2004
OSHSO ID: Q2614
Optional Report No.: 02903

Inspection Site:
5 Wilder Ave
Honolulu, HI 96822

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the law has occurred unless there is a failure to contest as provided for in the law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

State of Hawaii

Department of Labor and Industrial Relations

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 01/14/2004. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 306259359
Inspection Dates: 09/12/2003 -



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 01/14/2004

Citation and Notification of Penalty

Company Name: Color Dynamics Inc
Inspection Site: 999 Wilder Ave, Honolulu, HI 96822

Citation 1 Item 1 Type of Violation: **Repeat**

29 CFR 1926.451(g)(3) [Refer to chapter 12-130.1, HAR] was violated because:

Employees working on a suspended module scaffold 55' above ground level were not protected from fall hazards by use of personal protective equipment and lifelines.

29 CFR 1926.451(g)(3) states "In addition to meeting the requirements of 1926.502(d), personal fall arrest systems used on scaffolds shall be attached by lanyard to a vertical lifeline, horizontal lifeline, or scaffold structural member. Vertical lifelines shall not be used when overhead components, such as overhead protection or additional platform levels, are part of a single-point or two point adjustable suspension scaffold."

Location: 999 Wilder Ave

First Violation: Color Dynamics Inc. was previously cited for a violation of the Occupational Safety and Health standard or it's equivalent standard (29 CFR 1926.451(g)(3), which was contained in HIOSH inspection number 304218720, citation Number 01, Item Number 002, issued on August 08, 2002 and became a final order on May 28, 2002.

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$6,000.00

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 306259359
Inspection Dates: 09/12/2003 -



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 01/14/2004

Citation and Notification of Penalty

Company Name: Color Dynamics Inc
Inspection Site: 999 Wilder Ave, Honolulu, HI 96822

Citation 2 Item 1 Type of Violation: Serious

29 CFR 1926.451(d)(5)(iii) [Refer to chapter 12-130.1, HAR] was violated because:

Tie backs were not used to prevent displacement of the parapet clamps supporting the scaffold which exposed employees to a fall hazard.

29 CFR 1926.451(d)(5)(iii) states "Suspension scaffold support devices such as cornice hooks, roof hooks, roof irons, parapet clamps, or similar devices shall be: Secured against movement by tiebacks installed at right angles to the face of the building or structure, or opposing angle tiebacks shall be installed and secured to a structurally sound point of anchorage on the building or structure. Sound points of anchorage include structural members, but do not include stand pipes, vents, other piping systems, or electrical conduit."

Location: 999 Wilder Ave

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$3,000.00

Citation 2 Item 2 Type of Violation: Serious

29 CFR 1926.451(f)(1) [Refer to chapter 12-130.1, HAR] was violated because:

A suspended module scaffold was overloaded in excess of its rated capacity which exposed employees to fall injuries.

29 CFR 1926.451(f)(1) states "Scaffolds and scaffold components shall not be loaded in excess of their maximum intended loads or rated capacities, whichever is less."

Location: 999 Wilder Ave

Abatement Documentation Required

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$3,000.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 306259359
Inspection Dates: 09/12/2003 -



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 01/14/2004

Citation and Notification of Penalty

Company Name: Color Dynamics Inc
Inspection Site: 999 Wilder Ave, Honolulu, HI 96822

Citation 2 Item 3 Type of Violation: **Serious**

29 CFR 1926.451(f)(3) [Refer to chapter 12-130.1, HAR] was violated because:

Inspection of a suspended module scaffold and components was not conducted on the day of the scaffold collapse to prevent serious fall injuries to employees.

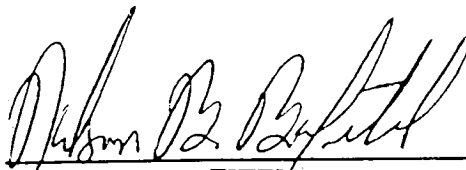
29 CFR 1926.451(f)(3) states "Scaffolds and scaffold components shall be inspected for visible defects by a competent person before each work shift, and after any occurrence which could affect a scaffold's structural integrity."

Location: 999 Wilder Ave

Abatement Documentation Required

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$3,000.00


NELSON B. BEFITEV
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
30 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813



SUMMARY OF PENALTIES

Company Name: Color Dynamics Inc
Inspection Site: 999 Wilder Ave
Honolulu, HI 96822
Issuance Date: 01/14/2004

Summary of Penalties for Inspection Number 306259359

Citation 01, Repeat = \$6,000.00
Citation 02, Serious = \$9,000.00

TOTAL PENALTIES \$15,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

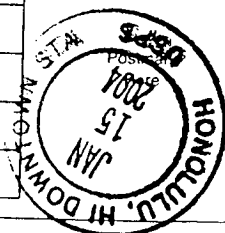
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U.S. Postal ServiceTM CERTIFIED MAILTM RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

Safety Postage \$ 8.30
Certified Fee 2.30
Return Receipt Fee (Endorsement Required) 1.75
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees \$ 12.35

306259359



To: Color Dynamics Inc
Street, Apt. No., or PO Box No. 816 Gulick Ave
City, State, ZIP+4 Honolulu, HI 96819

NOTE THIS SECTION ON DELIVERY

Signature: *Heole Chung*
Delivered by (Printed Name) Heole Chung
C. Date of Delivery 1/15/04
Delivery address different from item 1? ☒ Yes
If S, enter delivery address below: ☒ No

Service Type
Certified Mail ☐ Express Mail
Registered ☐ Return Receipt for Merchandise
Insured Mail ☐ C.O.D.
Restricted Delivery? (Extra Fee) ☐ Yes

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ABATEMENT CERTIFICATION

NELSON B. BEFITEL, DIRECTOR
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Color Dynamics Inc
816 Gulick St
Honolulu, HI 96819

The hazard referenced in Inspection Number 306259359 for the violation identified as Citation 01 and item 001 was corrected on _____.
How corrected _____.

The hazard referenced in Inspection Number 306259359 for the violation identified as Citation 02 and item 001 was corrected on _____.
How corrected _____.

The hazard referenced in Inspection Number 306259359 for the violation identified as Citation 02 and item 002 was corrected on _____.
How corrected _____.

The hazard referenced in Inspection Number 306259359 for the violation identified as Citation 02 and item 003 was corrected on _____.
How corrected _____.

I attest that the Information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

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